United States – Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan

(WT/DS/192)

Second Written Submission of the United States

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I. INTRODUCTION

1. In the first eight months of 1998, imports of combed cotton yarn from all sources surged by 91.3 percent – nearly doubling their level over the same period in the prior year. Prior to this huge increase, the combed cotton yarn for sale industry had been struggling to adjust to steady increases in imports. But the dramatic 1998 surge sent the combed cotton yarn for sale industry into a downward economic spiral: production dropped, shipments declined, inventories increased, unfilled orders fell, market share contracted, profitability evaporated, investment stagnated, employment declined, and mills exited the industry.

2. During this same period, imports of low-priced combed cotton yarn from Pakistan – priced 26.2 percent below the average U.S. price – jumped by 283.2 percent. As a result of this sharp and substantial increase in imports, imports from Pakistan as a share of domestic production *quadrupled*, and imports from Pakistan as a percentage of total imports *doubled*.

3. Faced with these facts – which remain unrebutted by Pakistan – the United States exercised the rights given to importing Members under the WTO *Agreement on Textiles and Clothing* ("ATC") and invoked the Article 6 transitional safeguard mechanism. This transitional safeguard did not stop imports of combed cotton yarn from Pakistan. Rather, pursuant to the ATC, the transitional safeguard capped the volume of imports from Pakistan at their then current level of 5,262,665 kilograms[1] in order to give the domestic industry – which suffered serious damage and actual threat of serious damage from the increased imports – a chance to adjust to these suddenly changed conditions.

4. The United States has demonstrated, in its various submissions to the Panel, that it complied with all the requirements of the ATC when it invoked this transitional safeguard measure on imports of combed cotton yarn from Pakistan. Pakistan has failed to establish otherwise. Instead, Pakistan has used these proceedings to introduce speculation, evidence outside the scope of the terms of reference, and unfounded interpretations of the facts and of WTO jurisprudence. Such efforts obscure both the facts of the case and the plain terms of the ATC. More troubling, Pakistan has also used this process to encourage the Panel to rewrite the terms of Article 6 and fundamentally disrupt the ATC's carefully negotiated balance of rights and obligations.

5. The single question facing the Panel is whether this transitional safeguard – based on an objective assessment of the facts before the United States at the time of its investigation – accords with the terms of Article 6 of the ATC. As discussed below, consideration of this question in light of the facts of this case and within the four corners of the ATC should lead the

[1] As provided in Article 6.13 of the ATC, this figure increased by six percent – to 5,578,425 kilograms – when this transitional safeguard measure was extended for a second year. *See* Exhibit "U.S.-6."

Panel to conclude that the U.S. transitional safeguard on combed cotton yarn from Pakistan is fully consistent with the rights given to importing Members under Article 6 of the ATC.

II. IT WOULD BE INAPPROPRIATE FOR THE PANEL TO GO OUTSIDE OF THE SCOPE OF THE FACTS OF THIS CASE AND THE ATC TO ADDRESS THE MATTER AT ISSUE.

6. The United States submits that the analysis of this dispute must be based solely on the facts before the United States at the time of its Article 6 investigation and on the language of the ATC. Pakistan thinks otherwise. Instead of examining the facts underlying the U.S. investigation, Pakistan places before the Panel speculation, evidence not in existence at the time of the U.S. investigation, or evidence equally outside the scope of this proceeding. Instead of examining the plain text and the object and purpose of the ATC, Pakistan points this Panel to words from other agreements and interpretations of terms and phrases that do not appear in the ATC. The United States would urge the Panel to reject Pakistan's numerous efforts in this regard and to focus instead on the facts of this case and the obligations contained in Article 6 of the ATC.

7. The Panel in *United States - Measure Affecting Imports of Woven Wool Shirts and Blouses from India* explained the role of panels in reviewing a dispute such as this and clarified the limits of such a review:

> Unlike the TMB, a DSU panel is not called upon, under its terms of reference, to reinvestigate the market situation. When assessing the compatibility of the decision to impose national trade remedies, *DSU panels do not reinvestigate the market situation but rather limit themselves to the evidence used by the importing Member in making its determination to impose the measure.* In addition, such DSU panels, contrary to the TMB, do not consider developments subsequent to the initial determination. In respect of the US determination at issue in the present case, we consider, therefore, that this Panel is requested to make an objective assessment as to whether the United States respected the requirements of Article 6.2 and 6.3 *at the time of the determination.*[2]

8. The Market Statement reflects the evidence used by the United States in making its determination and therefore defines the scope of this Panel's factual review. For that reason, the United States submits that the Panel must focus on the *facts* before the United States at the time of its investigation – not, as Pakistan advances, unsupported speculation,[3] misstatements of fact,[4]

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[2] *United States - Measure Affecting Imports of Woven Wool Shirts and Blouses from India* , WT/DS33/R, Report of the Panel, 6 January 1997 ("*United States - Wool Shirts*"), at ¶ 7.21. (emphasis supplied)

[3] *See e.g.*, First Written Submission of Pakistan, at p. 21 (unsupported speculation concerning whether foreign yarn producers exist which are owned by U.S. yarn producers); p. 25 note 33 (unsupported speculation

(continued...)

developments occurring subsequent to the investigation,[5] or facts outside the scope of the U.S. investigation.[6]

9. While the Market Statement defines the scope of the factual review, the four corners of the ATC determine the Panel's legal analysis. The Appellate Body has emphasized the need to remain within the "four corners"of the ATC and to interpret Article 6 based on "its text and context ... considered in light of the objective and purpose of Article 6 and the ATC."[7] This dispute does not raise any issue that the ATC does not fully answer, and thus resolution of this dispute should remain within the four corners of the ATC.

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[3] (...continued)
concerning whether vertically integrated fabric producers purchase combed cotton yarn in the market); p. 28 (unsupported speculation concerning whether vertically integrated fabric producers sell all or most of their yarn on the market); p. 33 (unsupported speculation concerning whether closures of combed yarn production to catch up on carded yarn orders are common in the industry). *See also* Statement of Pakistan at the First Meeting of the Panel, at p. 3 (unsupported speculation concerning whether vertically integrated fabric producers import yarn from Pakistan) and p. 4 (unsupported speculation concerning whether increasing vertical integration is occurring). *See also* Written Answers of Pakistan to Questions from the Panel, at p. 6 (unsupported speculation concerning whether combed cotton yarn manufactured by vertically integrated fabric producers is directly competitive with imports); p. 7 (unsupported speculation concerning whether there are vertically integrated fabric producers wishing to import yarn from Pakistan); p. 7 (unsupported speculation concerning whether AYSA fully represents the combed cotton yarn for sale industry); and p. 9 (unsupported speculation concerning whether the yarn industry is becoming vertically integrated).

[4] *See e.g.*, Statement of Pakistan at the First Meeting of the Panel, at pp. 3-4 (misstatement that Pakistan's exports represent only a small proportion of the U.S. market when in fact Pakistan is one of the largest and fastest growing suppliers of textiles and apparel to the U.S. market. Under the ATC, Pakistan has moved from the seventh to the fourth largest supplier of textiles and apparel to the United States, with nearly $2 billion in shipments to the United States. Measured by volume, imports of textiles and apparel from Pakistan since the ATC entered into force increased 127.6 percent in absolute terms, or an average rate of 17.9 percent per year, each year (while total imports from the world of textiles and apparel in volume increased 65.6 percent overall and by an average annual rate of 10.6 percent). Measured by value, imports of textiles and apparel from Pakistan increased 92 percent overall since the ATC entered into force and by an average annual rate of 13.9 percent, again outpacing the growth registered in imports from the world (59.4 percent and 9.8 percent, respectively)). *See also* First Written Submission of Pakistan, at p. 28 (false claim that there are vertically integrated fabric producers which sell or purchase all yarn needs on the merchant market). *See also* Answers of Pakistan to Written Questions from the Panel, at pp. 17-18 (misstatements concerning the combed and carded cotton yarn processes; see *infra* note 63).

[5] *See e.g.*, First Written Submission of Pakistan, at p. 31 (introduction of 1998 production data of the U.S. Bureau of Census released subsequent to issuance of the Market Statement) and p. 41 (introduction of evidence of Pakistan's import trends subsequent to the investigation).

[6] *See e.g.*, First Written Submission of Pakistan, at 30, 35 (introduction of data contained in market statement prepared in 1997; this market statement was not the basis for the transitional safeguard at issue) and pp. 35-36 (introduction of 1993 investment data outside the scope of the U.S. investigation). *See also* Answers of Pakistan to Written Questions from the Panel, at p. 11 (figures from 1994-1995 not the basis for the U.S. investigation at issue) and p. 20 (production figures for carded cotton yarn are not germane to this dispute).

[7] *United States - Restrictions on Imports of Cotton and Man-Made Fibre Underwear*, WT/DS24/AB/R, Report of the Appellate Body, 25 February 1997, ("Report of the Appellate Body, *United States - Underwear*"), at pp. 12, 14.

10. For example, Article 6.2 addresses the scope of the domestic industry as the industry "producing like and/or directly competitive products." Different formulations of domestic industry contained in other agreements, such as *Agreement on Safeguards* ("Safeguards Agreement"), *Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("Antidumping Agreement"), or the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"), are therefore not relevant to this Panel's review.

11. Likewise, the text of the ATC covers issues relating to serious damage, actual threat of serious damage, causation, and attribution. Articles 6.2 and 6.3 of the ATC define the standard for examining whether increased quantities of imports cause *serious damage* or actual threat of *serious damage*. It would be inappropriate, then, for the Panel to rely on language or interpretations of other agreements (e.g., the Safeguards Agreement) that refer to serious *injury* rather than serious *damage* or that interpret causation for purposes of these agreements. Additionally, attribution under Article 6.4 of the ATC is unique to Article 6 of the ATC. Therefore, no other WTO agreement is relevant to the Panel's consideration of this issue.

12. Finally, Articles 6.7 and 6.8 define the requirements and time-period for the information necessary for inclusion in the Market Statement. Therefore, the United States submits that the Panel should refrain from considering benchmarks established under other agreements or imputing requirements for Article 6 investigations from non-transitional WTO agreements.

13. By confining its consideration to the four corners of the ATC, the Panel will ensure the integrity of the obligations of the ATC and will advance the unique object and purpose of that agreement, which differ fundamentally from all other WTO agreements. The ATC represents a careful balancing of rights and obligations between importing and exporting Members to guide the textiles and clothing sector through its ten-year transition from a regime of special rules to the rules of the *General Agreement on Tariffs and Trade 1994* ("GATT"). The Article 6 transitional safeguard mechanism represents a fundamental part of the ATC's carefully negotiated text; it is *not*, as Pakistan wrongly states, a measure running counter to the basic purpose of the ATC.[8]

14. The United States submits that this unique object and purpose should inform each and every aspect of the Panel's assessment of the facts of this case. The ATC is not Article XIX of the GATT or the Safeguards Agreement, whose different text reflects the different purpose of providing global safeguard actions for products subject to the GATT. The ATC is not Article III:2 of the GATT, whose different text reflects its unique purpose of avoiding protectionism in the application of internal tax and regulatory measures. The ATC is not the Antidumping Agreement, whose different text reflects the purpose of condemning injurious dumping and providing disciplines for situations where a product is being introduced into the commerce of another country at less than fair value. Therefore, it would be inappropriate for the Panel to

[8] Written Answers of Pakistan to Questions from the Panel, at p. 13.

inform its interpretation of the ATC with agreements whose plain text, object, and purpose differ so fundamentally from that of the ATC.

15. Pakistan attempts to entice this Panel to consider other WTO agreements by arguing that several panels have relied on the ATC in their consideration of disputes under other agreements. Pakistan specifically points to the panel report on *Argentina - Safeguard Measures on Imports of Footwear* which contains references to the panel reports in *United States - Underwear* and *United States - Wool Shirts*. Pakistan asks "[i]f the interpretations of the ATC can be invoked to guide the interpretation of other WTO agreements, why should the interpretation of other WTO agreements not guide the interpretation of the ATC?"[9] However, Pakistan fails to note that the citation in that case was in the context of the Panel's *procedural* findings regarding the standard of review to be applied by panels under Article 11 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU").[10]

16. Therefore, the United States would urge the Panel not to give credence to the inaccurate assertions of Pakistan and should instead interpret Article 6 of the ATC within its "four corners."

III. THE UNITED STATES FULLY COMPLIED WITH THE REQUIREMENTS OF ARTICLE 6 IN ESTABLISHING A TRANSITIONAL SAFEGUARD ON IMPORTS OF COMBED COTTON YARN FROM PAKISTAN.

A. *Article 6 of the ATC Permits the U.S. Identification of the Combed Cotton Yarn For Sale Industry as the "Domestic Industry Producing Like and/or Directly Competitive Products."*

17. An objective assessment of the facts of this case leads to one conclusion, namely, that the U.S. definition of the domestic industry is fully consistent with the terms of the ATC. The United States identified the "domestic industry producing like and/or directly competitive products" according to the specific facts available to it during the investigation. Those facts are clear: combed cotton yarn for sale establishments produced and sold combed cotton yarn in the

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[9] Answers of Pakistan to Written Questions from the Panel, at p. 11, note 17. Pakistan refers to paragraphs 8.119 and 8.123 of *Argentina - Safeguard Measures on Imports of Footwear*, WT/DS121/R, Report of the Panel, 25 June 1999 ("*Argentina - Safeguards*").

[10] *See also Argentina - Safeguard Measures on Imports of Footwear*, WT/DS121/AB/R, Report of the Appellate Body, 14 December 1999, at ¶¶ 117-118 ("Although the Panel ultimately stated the standard of review correctly, we are surprised that the Panel based its approach on ... two previous WTO panels in *United States - Underwear* and *United States - Shirts and Blouses*."). In the context of examining the standard of review under Article 11 of the DSU, the Panel also considered whether the national authority must consider "all relevant factors" listed in Article 4.2(a) of the Safeguards Agreement. The Panel – in stating that the Article 4.2(a) *explicitly* requires this analysis – also referred to findings in *United States - Underwear* and *United States - Wool Shirts*, which required a examination of all factors in Article 6.4 of the ATC even though the ATC contains no such express requirement. *Argentina - Safeguards*, at ¶ 8.123.

marketplace in competition with Category 301 imports. By contrast, vertically integrated fabric producers did not produce combed cotton yarn for sale in the market; rather they spun combed cotton yarn for internal consumption in the subsequent production of fabric (and other products) for sale in the market.[11]

18. Those are the facts that were before the United States during the investigation period, and those are the facts which, the United States submits, should constitute the Panel's focus. Pakistan's suggestion that the situation *may have been* otherwise is mere speculation and does not reflect the market reality at the time of the U.S. determination. The ATC does not require the importing Member to account for what could conceivably be the case but rather requires it to focus on the domestic industry that is in fact producing the "like and/or directly competitive products" at the time of the determination. The United States did just that based on existing facts and the actual market situation.

19. As discussed below, the U.S. identification of the domestic industry fully accords with the terms of Article 6. Pakistan has raised no challenge to this identification that withstands scrutiny.

1. *The ATC Permits the U.S. Identification of the Domestic Industry as the Combed Cotton Yarn for Sale Industry.*

20. In strict accordance with the ATC, the United States identified the "domestic industry producing like and/or directly competitive products" as the combed cotton yarn for sale industry. Combed cotton yarn for sale establishments produce combed cotton yarn and sell it in the market. This yarn is directly competitive with Category 301 imports. By contrast, vertically integrated fabric producers produce fabric, apparel, or home furnishings for sale in the open market. These establishments spin combed cotton yarn in the subsequent production of an entirely separate product for an entirely separate market. Neither the yarn vertically integrated fabric producers manufacture for their internal consumption nor their end product is directly competitive with Category 301 imports.

21. The U.S. focus on directly competitive products is entirely consistent with the ATC, which expressly authorizes importing Members to identify an industry on the basis of directly competitive products. Nothing about the ordinary meaning or context of the phrase "domestic

[11] At most, vertically integrated producers released *de minimis* quantities of yarn in the market in those rare circumstances in which they had experienced an imbalance in manufacturing – leading to yarn in excess of their fabric needs. As explained in the Market Statement, vertically integrated fabric producers attempt to balance their production as closely as possible at each stage of the production process and therefore attempt to manufacture only as much combed cotton yarn as needed for their own internal consumption in the production of a subsequent fabric product. Market Statement, at Appendix I. *See also* First Written Submission of the United States, at ¶¶ 46-48 and notes 37 and 38.

industry producing like and/or directly competitive products," or the object or purpose of Article 6 and the ATC suggests otherwise.

22. The plain meaning of this phrase makes it clear that competition is a relevant factor in determining the scope of the domestic industry, and therefore it is appropriate for a Member to focus on the domestic industry producing directly competitive products.[12] The context of Article 6.2 – informed by the market-based factors that Members must consider under Article 6.3 – supports this reading and underscores the importance of the nature of competition in the market to the identification of the domestic industry.[13] Given that vertically integrated fabric producers do not sell combed cotton yarn in the market in meaningful quantities, it would have been infeasible for the United States to consider many of these factors with respect to the combed cotton yarn spun by such establishments. To require their inclusion in the domestic industry would make it difficult to give meaning to many of these factors, and in effect, would preclude transitional safeguard action in these circumstances.

23. Finally, the object and purpose of Article 6 of the ATC require the Panel to give the phrase "domestic industry producing like and/or directly competitive products" its full range of meaning and uphold the U.S. focus on the industry producing directly competitive products. Article 6 exists for the purpose of providing importing Members meaningful recourse to a safeguard mechanism during the transition period in which the textiles and clothing sector is integrated into the GATT. Accordingly, this provision is a fundamental aspect of the carefully negotiated balance struck in the ATC.[14] It is *not*, as Pakistan claims, a measure "running counter to the basic purpose of the ATC."[15] To disregard the ordinary meaning of "domestic industry producing like and/or directly competitive products" and limit the availability of an Article 6 safeguard only to physically "like" products would prevent the Panel from giving meaning to words clearly in the text and would amount to rewriting the ATC's carefully negotiated balance of rights and obligations.

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[12] The *New Shorter Oxford English Dictionary defines* "and/or" as "either together or as an alternative." Therefore, the ordinary meaning of the phrase "like and/or directly competitive" permits a Member to focus on the domestic industry producing *like* products, *like and directly competitive* products, or *directly competitive* products that are not *like*. Written Answers of the United States to Questions from the Panel, at ¶ 70.

[13] A transitional safeguard action is appropriate when increased quantities of imports cause serious damage/actual threat thereof to the domestic industry based on a range of factors set out in Article 6.3, most of which reflect the actual state of the domestic industry in the marketplace. These variables – including output, inventories, market share, exports, domestic prices, and profits – are only relevant to an industry producing a good for a particular market. Such factors are not relevant for goods that do not compete in the marketplace – such as combed cotton yarn spun by vertically integrated fabric producers for their own consumption. Answers of the United States to Written Questions from the Panel, at ¶ 17, note 30.

[14] *United States – Measures Affecting Imports of Woven Wool Shirts and Blouses from India*, WT/DS33/AB/R, Report of the Appellate Body, 25 April 1997, at p. 19 ("Report of the Appellate Body, *United States – Wool Shirts*").

[15] Answers of Pakistan to Written Questions from the Panel, at p. 13.

2. *Pakistan Has Failed to Establish that the U.S. Identification of the Domestic Industry Violates the ATC.*

24. Pakistan has advanced a litany of claims designed to challenge the inescapable conclusion that the U.S. identification of the combed cotton yarn for sale industry is consistent with the ATC. Essentially, Pakistan asserts that, as a legal matter, the ATC compels a Member to focus only on the industry producing *like* products, regardless of whether or not those products are also *directly competitive*. For this reason, Pakistan claims that the United States failed to examine the *entire* domestic industry because it did not include vertically integrated fabric producers that manufacture yarn for their internal consumption.[16] To advance this claim, Pakistan relies on a series of arguments – none of which withstand scrutiny.

a. The ATC Supports the U.S. Decision to Exclude Vertically Integrated Fabric Producers from the Domestic Industry Because They Do Not Produce Directly Competitive Products.

25. Pakistan's first failed attempt to assail the U.S. definition of the domestic industry is to ignore the facts of this case and confuse WTO jurisprudence. Pakistan makes the unfounded claim that "it is not logically possible to define products as 'like but not directly competitive' because, being alike, they are necessarily also directly competitive."[17] To support this claim, Pakistan relies on a misunderstanding of Appellate Body interpretations of the phrase "directly competitive or substitutable" found in *Ad* Article III:2 of the GATT.

26. The facts of this case – on which any determination of "like and/or directly competitive" must turn – clearly establish that combed cotton yarn spun by vertically integrated fabric producers for their own consumption may be physically "like" Category 301 imports but not "directly competitive" with Category 301 imports. Thus, as a matter of fact, combed cotton yarn spun by vertically integrated fabric producers for their own consumption is not intended for release on the marketplace and is not directly competitive with Category 301 imports.

27. Under the ATC, a product can be like *but not* directly competitive. Article 6.2's phrase "domestic industry producing like and/or directly competitive products" contemplates circumstances where a domestic product may be like but not directly competitive with an imported product.

28. Pakistan attempts to obscure this ordinary reading by relying on interpretations of a separate phrase ("directly competitive or substitutable") in a separate agreement (Article III:2 of

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[16] On this basis, Pakistan has asserted that the United States accounted for less than one-half of the producers of combed cotton yarn and only two-thirds of the total production. Given that the U.S. definition of domestic industry is fully consistent with the ATC, there is no basis for this claim.

[17] Answers of Pakistan to Written Questions from the Panel, at p. 4.

the GATT) under separate facts (products actually competing on the market).[18] The Appellate Body's findings cited by Pakistan concern the relationship between "like" and "directly competitive or substitutable" for purposes of Article III:2 of the GATT. There are fundamental differences between the text, context, and purposes of Article III:2 of the GATT and Article 6 of the ATC which yield a fundamentally different relationship between "like" and "directly competitive."

29. Textually, in Article III:2 of the GATT, the terms "like" and "directly competitive" are not used together. "Like" appears in the *first* sentence of Article III:2, and "directly competitive" appears as a separate term in of *Ad* Article III to give meaning to the *second* sentence of Article III:2. By contrast, the Article 6 of the ATC joins in the same sentence the terms "like" and "directly competitive" by the "and/or" function word.

30. In the context of *Ad* Article III, the relevant phrase analyzed by the Appellate Body is not "directly competitive" but "directly competitive or substitutable." The meaning of this phrase is informed by both terms, each of which has a separate definition.[19] Therefore, in defining the relationship with "like", the Appellate Body did so on the basis of the *entire* phrase "directly competitive or substitutable." The absence of the term "substitutable" from the ATC strongly suggests that the relationship between "like" and "directly competitive or substitutable" in Article III:2 of the GATT differs from "like and/or directly competitive" in the ATC.[20]

31. In the context of Article 6 of the ATC, the relevant phrase is "like and/or directly competitive." The word "and/or" permits each of the terms to function independently so that neither of the terms must be construed as a subset of the other.[21] The prior existence of the MFA, which confirmed the independent meaning of "directly competitive," supports this view.[22]

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[18] It is misleading for Pakistan to state "[t]he principles of treaty interpretation that the Appellate Body applied to determine the meaning of 'directly competitive' in Article III:2 of the GATT are therefore equally applicable to the interpretation of the same terms in Article 6.2 of the ATC." Answers of Pakistan to Written Questions from the Panel, at p. 10. The Appellate Body made findings on the term "directly competitive or substitutable" in the GATT not on the term "like and/or directly competitive" in the ATC. *Korea - Taxes on Alcoholic Beverages*, WT/DS75/AB/R, Report of the Appellate Body, 18 January 1999 ("Report of the Appellate Body, *Korea - Taxes on Alcoholic Beverages*"), at ¶¶ 114-124.

[19] In *Korea - Taxes on Alcoholic Beverages*, the Appellate Body recognized the separate and distinct meanings of the two terms: "...the word 'competitive'...means 'characterized by competition [footnote omitted],' and...the word 'substitutable'...means 'able to be substituted [footnote omitted]'." Report of the Appellate Body, *Korea - Taxes on Alcoholic Beverages*, at ¶ 114. Indeed, this definition suggests that "substitutable" has an even broader meaning than directly competitive. *See infra* at ¶¶ 36-38.

[20] *See infra* at ¶¶ 36-38.

[21] If the ATC did not intend to give each term independent meaning, it is puzzling why it uses "and/or" instead of an alternative formulation. "And/or" implies that some products are like but not directly competitive.

[22] Report of the Appellate Body, *United States - Underwear*, at p. 16 ("...the prior existence and demise, as it were, of the MFA" informs the context of Article 6 of the ATC). *See also* Written Answers of the United States to

(continued...)

32. Finally, the purpose served by the *relationship* between "like" and "directly competitive" differs fundamentally between Article III:2 of the GATT and Article 6 of the ATC. In Article III of the GATT, "like" and "directly competitive or substitutable" refer to separate obligations. "Like" gives meaning to the narrow prohibition contained in the first sentence of Article III:2, while "directly competitive or substitutable" gives meaning to the broader prohibition contained in the second sentence of Article III:2. Accordingly, the Appellate Body interpreted the relationship between the terms to accord with the distinct purpose served by each of the two sentences contained in Article III:2. "The notion of like products must be construed narrowly [footnote omitted] but the category of directly competitive or substitutable is broader [footnote omitted]. While perfectly substitutable products fall within Article III:2, first sentence, imperfectly substitutable products can be assessed under Article III:2, second sentence."[23]

33. Under Article 6 of the ATC, the terms "like and/or directly competitive" stem from the same legal obligation. Linked together, these words are both designed to identify the permissible range of products based on which an importing Member may identify the domestic industry for purposes of a transitional safeguard action. In the transitional safeguard context, neither term need necessarily be broader or narrower than the other. However, each term has meaning. Pakistan's reading of Article 6.2 – namely, that there are no products which are like but not directly competitive – would fail to give full meaning intended by the phrase "domestic industry producing like and/or directly competitive products" and would arbitrarily narrow the range of options available to importing Members. Goods that may be physically "like" are not necessarily "directly competitive," particularly those which never enter the market and thus do not directly compete.

34. In sum, Pakistan is unable to find any basis in fact or in law for its assertion that "the domestic industry cannot produce an individual product that is like but not directly competitive because there are not such products."[24] The facts of this case clearly demonstrate that Pakistan's "logic" rests on faulty premises. Moreover, Article 6.2's phrase "like and/or directly competitive products" expressly contemplates the existence of like but not directly competitive products. As a result, Pakistan's reliance on the Appellate Body's interpretation of the term "like" and "directly competitive and or substitutable product" as these terms appear in Article III:2 and *Ad* Article III:2 is misplaced and in no way undermines the ATC-consistency of the U.S. identification of the domestic industry.

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[22] (...continued)
Questions from the Panel, at ¶ 25.

[23] Report of the Appellate Body, *Korea - Taxes on Alcoholic Beverages*, at ¶ 118. *See also Japan - Taxes on Alcoholic Beverages*, WT/DS8/R/AB, Report of the Appellate Body, 4 October 1996, ("Report of the Appellate Body, *Japan - Alcohol*"), at pp. 19-20.

[24] Answers of Pakistan to Written Questions from the Panel, at p. 5.

b. Combed Cotton Yarn Spun by Vertically Integrated Fabric Producers is Not Directly Competitive with Category 301 Imports for Purposes of the ATC.

35. Pakistan also claims that the Appellate Body concluded in *Korea - Taxes on Alcoholic Beverages* that "'directly competitive products' are products with common characteristics that give them the *potential* of satisfying the same need or taste."[25] Pakistan again misreads WTO jurisprudence in its attempt to discredit the U.S. identification of the combed cotton yarn for sale industry as the "domestic industry producing like and/or directly competitively products."

36. The Appellate Body made its findings, *not* on the phrase "directly competitive products," as Pakistan asserts, but rather on the phrase "directly competitive or substitutable product" found in *Ad* Article III:2 of the GATT.[26] The word "substitutable" – a key term in the phrase "directly competitive or substitutable" which does not appear in Article 6.2 of the ATC – was central to the Appellate Body's findings regarding potential competition and latent demand:

> Accordingly, the wording of the term "directly competitive or substitutable" implies that the competitive relationship between products is *not* to be analyzed *exclusively* by reference to *current* consumer preferences. In our view, the word "substitutable" indicates that the requisite relationship *may* exist between products that are not, at a given moment, considered by consumers to be substitutes but which are, nonetheless, *capable* of being substituted for one another.[27]

The United States submits that the Panel should therefore not impute interpretations of the phrase "directly competitive or substitutable" to interpret an agreement which is designed to cover "like and/or directly competitive" but does not address "substitutable" products.[28]

37. Pakistan is wrong to suggest that the potentially competitive relationship implied by the term "directly competitive or substitutable" also applies to the phrase "like and/or directly competitive." It does not. The *New Shorter Oxford English Dictionary* defines "competitive" as "of, pertaining to, involving, characterized by, or decided by competition." The qualifying term "directly" suggests "a degree of proximity in the competitive relationship between the domestic

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[25] Answers of Pakistan to Written Questions from the Panel, at p. 5.

[26] The United States notes that the U.S. interpretation to which Pakistan refers on page 5 of its answers to the Panel's written questions was of the phrase "directly competitive or substitutable" in *Ad* Article III:2, *not* to the phrase "domestic industry producing like and/or directly competitive products" in Article 6.2 of the ATC.

[27] Report of the Appellate Body, *Korea - Taxes on Alcoholic Beverages*, at ¶ 114. (italics in original) (underlines supplied)

[28] Pakistan appears to argue that the Panel should import a word, "substitutable," that is not present in the ATC. The United States believes that the Panel should instead draw the natural conclusion from the absence of that term in the ATC that the drafters of the ATC chose not to include "substitutable" for a reason.

and the imported product."[29] In other words, "directly competitive" reflects the actual state of affairs in the marketplace. By contrast, "directly competitive or substitutable," influenced by the ordinary meaning of "substitutable," could imply a potentially competitive relationship.[30]

38. Moreover, the potential competition considered by the Appellate Body in *Korea - Taxes on Alcoholic Beverages* does not refer to some remote, hypothetical possibility. Pakistan has attempted to suggest as much by introducing hypothetical situations where combed cotton yarn manufactured by vertically integrated fabric producers *might theoretically* compete with imports of combed cotton yarn.[31] Pakistan has provided no evidentiary support for this speculation, and the United States was aware of no such circumstances at the time it prepared its Market Statement.[32] Moreover, Pakistan's claim that vertically integrated fabric producers would completely restructure simply to take advantage of low cost imports is based on an overly simplistic view of the initial business decision that led these establishments to produce fabric and fabric products within a vertically integrated structure.[33] Likewise, Pakistan seems to confuse "directly competitive" with "indirectly competitive" in asserting that the transitional safeguard actually benefits vertically integrated fabric producers.[34]

39. As the Panel in *Korea - Taxes on Alcoholic Beverages* stated, even potential competition depends on the actual facts of the case and not speculation: "We, indeed, are not in the business of speculating on future behaviour...We will not attempt to speculate on what could happen in the distant future, but we will consider evidence pertaining to what could reasonably be expected to

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[29] Report of the Appellate Body, *Korea - Taxes on Alcoholic Beverages*, at ¶ 116.

[30] *Compare New Shorter Oxford English Dictionary* definition of "like" ("having the same characteristics or qualitites as some other person or thing; of approximately identical shape, size, etc., with something else; similar") *and* "competitive" ("of, pertaining to, involving, characterized by competition) *with* that of "substitutable" ("able to be substituted").

[31] *See* First Written Submission of Pakistan, at note 33, *and* Answers of Pakistan to Written Questions from the Panel, at p. 6.

[32] As the United States stated in the Market Statement, the "USG verified that less than five percent of the integrated sector's yarn consumption was purchased from the 'for sale' market during the period covered by the investigation." Market Statement, at Appendix I. Subsequent verification revealed that vertically integrated producers purchase roughly two percent of their consumption of combed cotton yarn from the market and sell roughly one percent of their production on the open market. First Written Submission of the United States, at ¶ 69.

[33] As the United States explained, an establishment that is structured to make its production of fabric independent of the "for sale" market achieves advantages other than merely being in a position to produce low-cost yarn. *See* Answers of the United States to Questions from the Panel, at ¶ 32.

[34] As the United States explained, the effects of the subject transitional safeguard on vertically integrated producers of fabric, apparel, or home furnishings, if any, are at most indirect, given that vertically integrated producers do not normally enter the marketplace for yarn, either as a buyer or seller. Such indirect effects could also flow to other industries and businesses, including cotton growers, electrical utilities, etc. Answers of the United States to Questions from the Panel, at ¶¶ 30, 34, 35.

occur in the near term based on the evidence presented."[35] The United States would thus urge the Panel to rely on the unrebutted facts of the case as presented in the Market Statement and refrain from engaging in the speculation put forth by Pakistan.[36]

40. *De minimis* purchases of combed cotton yarn made by vertically integrated fabric producers are not, as Pakistan suggests, evidence of actual or potential competition.[37] As the United States explained, vertically integrated fabric producers purchase roughly two percent of combed cotton yarn from the merchant market and sell roughly one percent.[38] The fact that vertically integrated fabric producers may sell roughly one percent on the market does not mean that the other 99 percent – which never enters the market – is directly competitive with Category 301 imports. At the time of the Market Statement, vertically integrated fabric producers were not in the business of spinning yarn for the purpose of selling it in the market.[39] Nor was there any reason to expect this situation to change. Those were not the facts, and to suggest otherwise would both deny the facts as they existed at the time the United States made its determination and place the Panel in the position of reinvestigating the market situation.

41. In sum, products that compete only in either a speculative or indirect sense are not directly competitive based on the ordinary meaning of this term as considered in light of the object and purpose of Article 6. Accordingly, the United States submits that the Panel should reject Pakistan's speculation regarding potential competition. Its claims ignore the plain meaning of the text of Article 6, misconstrue WTO jurisprudence, attempt to impute unrelated phrases from separate agreements to the ATC, and make false assumptions about the facts as set forth in the Market Statement.

c. The U.S. Definition of Domestic Industry Reflects the Object and Purpose of the ATC.

42. On several occasions, Pakistan has asserted that the U.S. definition of "domestic industry" runs counter to the object and purpose of the ATC because the U.S. approach would

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[35] *Korea - Taxes on Alcoholic Beverages*, WT/DS75/R, Report of the Panel, 17 September 1998, at ¶¶ 10.48, 10.50.

[36] In *Korea - Taxes on Alcoholic Beverages*, the Appellate Body affirmed the Panel's conclusion that there was "'sufficient unrebutted evidence...to show *present* direct competition between the products'...this legal finding is...based firmly in the present." Report of the Appellate Body, *Korea - Taxes on Alcoholic Beverages*, at ¶ 113.

[37] Answers of Pakistan to Questions from the Panel, at p. 5.

[38] This situation occurs in those rare circumstances when, for some reason, the combed cotton yarn manufactured by vertically integrated fabric producers does not match its fabric production needs. *See* Market Statement, at Appendix I.

[39] Market Statement, at Appendix I (Vertically integrated fabric producers "may also on rare occasion sell excess yarn production.").

allow an importing Member to pick and choose a definition of industry that would maximize the chance of finding serious damage.[40] This claim is false.

43. Contrary to Pakistan's suggestion, the U.S. focus on directly competitive products does not enable a Member to pick and choose which domestic industry it wants to consider in any manner that is not contemplated by the ATC itself. Nor does it create an open-ended approach to the identification of the domestic industry. The ATC has set the scope of what can be considered the domestic industry as the domestic industry producing like and/or directly competitive products. The U.S. approach in this case falls within the permissible limits set out in the ATC.

44. Pakistan seems to think that this approach – although entirely consistent with the text of the agreement – would somehow undermine the ATC's purpose of adjusting to import competition. As evidence, Pakistan introduces more speculation to suggest that the combed cotton yarn industry will become more vertically integrated with the fabric industry in order to adjust to import competition. Pakistan states that "[a]s the integration of the textiles and clothing sector proceeds, more and more fabric producers may therefore affiliate with yarn producers. At the end of this process there may only be a few independent yarn producers left."[41]

45. Pakistan however fails to buttress this assertion with any facts, and the evidence in the industry reveals a much more complex picture. The textile industry in the United States is responding to the challenges of adjustment and greater competition in a number of ways. Companies have chosen a variety of strategies, or combinations of strategies – from becoming less vertically integrated to outsourcing to abandoning manufacturing altogether. Companies have exited the textile business. Others have made new acquisitions. Some have gone off-shore. Companies have concentrated their efforts in developing and diversifying overseas markets. Companies have invested in new plants and equipment in an effort to maintain competitiveness. Companies have also focused their investment strategies and efforts on strengthening their technical competence and on research and development for new technological or design innovations. Some have gone into higher value-added niche markets. Others are focusing at least part of their adjustment strategy on new systems for supply, logistics, distribution, planning, transportation, and deliveries. Others are developing new vertical linkages, either backward, or more commonly, forward.[42]

46. Even if the combed cotton yarn for sale industry became fully integrated into the fabric, apparel, or home furnishing industries in response to import competition or for any other reason, Pakistan is wrong to assume that this fact would have any impact – one way or another – on the

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[40] *See e.g.*, Answers of Pakistan to Questions from the Panel, at p. 9.

[41] Written Answers of Pakistan to Questions from the Panel, at pp. 9-10.

[42] Information contained in this paragraph is drawn from a variety of sources, including The Wall Street Transcript, Volume CXLIX Number 10, September 4, 2000, and Mark Payne, *Profiles of 12 US Textile Companies*, Textiles Outlook International, Textiles Intelligence Limited, September 2000.

ability of a Member to take a transitional safeguard action.[43] A safeguard action does not turn on whether an industry is vertically integrated or not. Rather, a safeguard action turns on whether, based on the unique facts and circumstances of a particular case, increased imports cause serious damage or actual threat thereof to the "domestic industry producing like and/or directly competitive products."

47. In other words, the relevant question in determining the scope of the domestic industry is who is producing the like and/or directly competitive products. As discussed above, vertically integrated fabric producers manufacture combed cotton yarn for internal consumption, do not produce combed cotton yarn for sale in the marketplace, do not produce a directly competitive product, and therefore could properly be excluded from the defined domestic industry.

d. None of Pakistan's Additional Claims Establish a Violation of the ATC.

48. Pakistan's additional criticisms of the U.S. definition of the domestic industry are unfounded. As discussed below, these claims rely on a misreading of the ATC and a misinterpretation of the facts. Accordingly, they fail to rebut the conclusion that the United States examined the domestic industry producing like and/or directly competitive products in accordance with the ATC.

49. First, Pakistan asserts that "[t]he terms of Article 6.2 make clear that the product subject to the safeguard action controls the definition of the domestic industry."[44] Although the importing product frames the analysis as a starting point, it is the producers of the like and/or directly competitive product that ultimately control the scope of the domestic industry. In other words, it is what the *domestic industry* produces, not what the *exporting industry* produces that defines the domestic industry in Article 6.2. Pakistan itself has recognized, in advancing other arguments, that "the domestic industry to be examined is defined in terms of product it produces...".[45]

50. Second, Pakistan asserts that, by covering all imports of combed cotton yarn, the U.S. transitional safeguard applies to a broader range of products than the combed cotton yarn for sale produced by the domestic industry. As a result, Pakistan claims that the United States failed to account for imports of combed cotton yarn by vertically integrated fabric producers. Pakistan, however, provides no factual basis for the contention that vertically integrated fabric producers

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[43] In Pakistan's Statement at the First Meeting of the Panel, Pakistan claimed "[if] all yarn plants in the United States were owned by fabric producers, the United States would, according to this industry definition, no longer have a yarn industry and could therefore no longer take safeguard actions against yarn imports." Statement of Pakistan at the First Meeting of the Panel, at p. 4.

[44] Answers of Pakistan to Written Questions from the Panel, at p. 6.

[45] Statement of Pakistan at the First Meeting of the Panel, at 2.

actually imported combed cotton yarn. Rather, Pakistan offers unsupported speculation that, in some hypothetical world, there might be a U.S. fabric plant wishing to purchase a yarn plant in Pakistan but would be unable to do so because of the transitional safeguard.[46] The United States notes that this speculation does not match the actual facts at the time the United States conducted its investigation.[47] Nor would the mere existence of a transitional safeguard prevent a business from purchasing a yarn plant in Pakistan, particularly given that Pakistan is able to ship 5,578,425 kilograms annually of combed cotton yarn to the United States.

51. Third, Pakistan claims that the United States failed to examine the entire industry because it relied on data furnished by the American Yarn Spinners Association ("AYSA"). However, as previously discussed, the membership of the AYSA fully represents the yarn for sale industry, and the United States verified this information to ensure that it was complete.[48] Pakistan has been unable to advance any argument – factual or otherwise – that contradicts this reality.

52. Fourth, because Pakistan cannot establish a violation of the ATC on the facts of this case, Pakistan looks to other agreements to support its claim that the United States failed to examine the entire industry on the theory that the definition of "domestic industry" must be interpreted in light of other WTO agreements. As Pakistan wrongly suggests, "[t]here is no reason why the issue of market segmentation in the case of a safeguard action under Article 6 of the ATC should be resolved differently than in the cases of safeguard actions under Article XIX of the GATT and countervailing and antidumping measures."[49] As the United States discussed in previous submissions, this claim does not withstand scrutiny. The plain text of Article 6.2 differs in key respects from other agreements, and the purpose of Article 6 (to provide a transitional safeguard during the integration of the textiles and clothing sector into the GATT) differs substantially from the purpose of the non-transitional safeguard provisions and from dumping and countervailing duty actions.[50]

53. In sum, Pakistan has failed to advance any argument that supports its claim that the U.S. focus on directly competitive products violated the ATC by not including vertically integrated fabric producers which spin yarn for their own consumption. Pakistan's claims rely on and impute terms from other agreements that are not relevant to the ATC; they misinterpret WTO

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[46] Answers of Pakistan to Written Questions from the Panel, at pp. 6-7.

[47] As the United States explained in its First Written Submission, even if vertically integrated fabric producers imported combed cotton yarn, the amount in question would constitute a subset of the already *de minimis* amount of yarn (two percent) that vertically integrated producers may purchase on the open market (which includes domestic production and imports). Excluding such *de minimis* quantities from the import figures used in the analysis of serious damage would not have affected the results in any statistically significant way. First Written Submission of the United States, at ¶ 71.

[48] First Written Submission of the United States, at ¶¶ 72-73.

[49] First Written Submission of Pakistan, at p. 26.

[50] *See* First Written Submission of the United States, at ¶¶ 57-62 *and* Answers of the United States to Written Questions from the Panel, at ¶¶ 12-14.

jurisprudence; they introduce groundless speculation; they ignore the facts of the case; and more importantly, they attempt to deny the existence of the plain text and the object and purpose of the ATC. These arguments serve only to distract the Panel from concluding that – based on an objective assessment of the facts of the this case considered in light of the governing agreement – the U.S. identification of the combed cotton yarn for sale industry fully accords with the text, object, and purpose of the ATC.

B. ***The U.S. Findings that Increased Imports Caused Serious Damage and Actual Threat of Serious Damage to the Domestic Industry Fully Accord with the ATC.***

54. Pakistan does not dispute the core data on which the United States relied in making its determination of serious damage and actual threat thereof under Articles 6.2 and 6.3. In a single eight-month period, imports from all sources increased over 91 percent compared to the same period of the prior year. In other words, total imports from all sources nearly doubled in the first two-thirds of 1998. For almost any industry, regardless of how well it had been proceeding with "continuous autonomous adjustment," such a staggering increase in imports would be overwhelming.

55. The Market Statement amply demonstrates that this near doubling of total imports in a mere eight-month period, as a matter of fact, *did* seriously damage the for sale combed cotton yarn industry. Every relevant economic indicator, including all the economic indicators set out in Article 6.3, supported this conclusion. For example, during the eight-month period during which total imports surged over 91 percent, and imports from Pakistan nearly *quadrupled* – surging 283.2 percent:

- *domestic production* dropped 10.2 percent;
- *shipments* declined 14.2 percent;
- *inventories* increased 145.9 percent;
- the *domestic market* share contracted 10 percentage points;
- *exports* fell by one-third;
- *unfilled orders* declined 15.8 percent; and
- the *ratio of imports to domestic production* more than doubled.

56. Pakistan recognizes that it is unable to counter these core facts. So Pakistan focuses attention away from the totality of the data by isolating one small factor after another and speculating about what could have been or might have been the case. The ATC does not

authorize the isolation of one factor in the list of eleven factors in Article 6.3 in reaching its determination of serious damage. Quite the contrary, Article 6.3 of the ATC states that "none of [these factors], either alone or when combined with other factors, can necessarily give decisive guidance." The United States would encourage the Panel to resist Pakistan's efforts to focus exclusively on one particular factor and should instead, as the ATC directs, review whether the United States examined *all* relevant factors in conducting its analysis. When this is done, the U.S. findings that increased imports caused serious damage and actual threat of serious damage to the domestic industry must stand.

1. *Pakistan's Arguments that the United States Has Not Found Serious Damage Fail to Establish a Violation of the ATC.*

57. Pakistan makes a number of unfounded assertions in its effort to undermine the clear U.S. finding of serious damage. First, Pakistan suggests that the standard of "serious damage" in the ATC means something more than "serious injury" of the Safeguards Agreement.[51] Throughout this proceeding, Pakistan has asserted that the ordinary meaning of "*serious* damage" is "*grave* injury impairing value or usefulness."[52] While this assertion is questionable given the multiple meanings of both "serious" and "damage" in *The Concise Oxford Dictionary* (Third Edition), on which Pakistan relies, this much is clear: whether or not there is a difference between "serious damage" and "serious injury," "serious damage" under the ATC does not require a Member to go beyond what is required under the Safeguards Agreement.[53] The ATC's transitional safeguard was not intended to make it *more difficult* to invoke a safeguard during the transitional period than it would be *after* the transitional period. Such a contention would run counter to the object and purpose of the ATC, which as discussed elsewhere, is to ease the transition of the textiles and clothing sector into the GATT.

58. Second, Pakistan's apparent claim that "serious damage" cannot be found if there was any possibility that the individual establishments in an industry could have "retooled" and become participants in another industry is wrong.[54] Pakistan's claim confuses the question of the existence or threat of serious damage with the question of the response to that damage or threat. Pakistan's claim also assumes that a single factor – which does not even appear in Article 6.3 – can *alone* preclude a finding of serious damage. Article 6.3 of the ATC plainly states that none of the factors that it requires a Member to consider can be individually dispositive of serious damage. It strains reason to suggest that a factor that is not even included among those enumerated in the ATC could alone preclude a finding of serious damage.

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[51] Article 4 of the Safeguards Agreement defines "serious injury" as "a significant overall impairment in the position of the domestic industry.

[52] *See* First Written Submission of Pakistan, at p. 33 *and* Answers of Pakistan to Written Questions from the Panel, at p. 16. (emphasis supplied)

[53] Answers of the United States to Written Questions from the Panel, at ¶ 39 and note 43.

[54] Answers of Pakistan to Written Questions from the Panel, at pp. 16-17.

59. Equally significant, Pakistan's suggestion that a finding of serious damage is incompatible with "continuous autonomous industrial adjustment"[55] is contrary to the ATC. As the United States has discussed, the ATC is intended to operate for a ten-year transitional period, at the end of which all textiles and apparel would be fully integrated into normal GATT rules. The ATC contemplated that this transitional period would be marked by "increased competition"[56] in Members' markets and by accompanying "continuous autonomous industrial adjustment."[57] Yet, the ATC also anticipated that, during this transitional period, "it may be necessary to apply a specific transitional safeguard."[58] Use of the Article 6 transitional safeguard during the transition period is fully compatible with the object and purpose of the ATC, contrary to Pakistan's claim that it is not.[59] The Article 6 transitional safeguard - which allows imports to continue at their current level and to grow annually by six percent - does not prevent industrial adjustment; rather, it facilitates industrial adjustment by providing an increasingly competitive but more stable and predictable environment within which adjustment can occur in the domestic industry.

60. In this connection, Pakistan urges the Panel to prevent a reading that would allow a Member "to declare successfully retooled plants to have suffered serious damage..."[60] Two observations are in order. First, the serious damage finding is a finding regarding the "domestic industry producing like and/or directly competitive products."[61] It is not a finding regarding individual establishments. The fact that three establishments producing combed cotton yarn for sale exited that industry during the U.S. investigation was relevant to that serious damage finding *as to the industry.* Second, Pakistan wrongly suggests that the United States rested its

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[55] Answers of Pakistan to Written Questions from the Panel, at p. 17.

[56] ATC, Art. 1.5.

[57] ATC, Art. 1.5.

[58] ATC, Art. 6.1.

[59] Answers of Pakistan to Written Questions from the Panel, at p. 13 ("The words "sparingly as possible" make clear that the drafters of the ATC regarded the transitional safeguard actions as measures running counter to the basic purpose of the ATC."). In this connection, the following observation on ATC Article 6 is appropriate:

> While restrictions on trade are distasteful, and while recognizing that the MFA [Multifiber Arrangement] was applied in a discriminatory, protectionist and sometimes arbitrary way, there were occasions during the life of the Arrangement when the importing country was genuinely suffering market disruption and thus had every right to the remedy provided for in the MFA. *While it is wrong to invoke serious damage when it does not occur, it is also wrong to systematically deny the occurrence of serious damage, even when it has occurred.* We mention this because our experience in the TSB show showed that it was not always the importing country that abused the MFA. (emphasis supplied)

Marcelo Raffaelli and Tripti Jenkins, *Drafting History of the Agreement on Textiles and Clothing*, 1995, at p. 108.

[60] Answers of Pakistan to Written Questions from the Panel, at p. 17.

[61] ATC, Art. 6.2.

determination of serious damage on the fact that these mills had exited the defined industry. As the Market Statement shows, however, this fact was only one of many factors that supported the U.S. determination of serious damage.[62] Pakistan's discussion of "retooling" is a vivid illustration of its effort to cloud the core facts on which the United States relied for its determination of serious damage.[63]

61. Finally, Pakistan attempts to discredit the U.S. finding of serious damage by introducing tables that purport to show that the events in January-August 1998 in the for sale combed cotton yarn industry were merely part of the "continuous autonomous industrial adjustment" in that industry.[64] Pakistan notes that establishments had been leaving the industry as early as 1994 and that production figures show that, even with fewer establishments, production was increasing. A close look at these figures is warranted. What they do appear to show is that, in the years prior to 1998, the combed cotton yarn for sale industry was engaged in a process of "autonomous adjustment" with some establishments leaving the industry and the remaining establishments

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[62] The totality of these factors showed that the domestic combed cotton yarn for sale industry was suffering serious damage and actual threat thereof. *See* First Written Submission of the United States, at ¶¶ 158-159.

[63] In this regard, the United States notes that Pakistan's answer to question 7 from the Panel contains a number of key misstatements, which have the potential to confuse the issue focus attention away from the totality of factors under review. First, Pakistan's claim that "essentially, all spun yarns are carded yarns [and that] combed yarns are a sub-category of carded yarns, that is carded yarns which have also been combed" is inaccurate. Combing is an integral part of the production of combed cotton yarn, not an incidental process that may or may not be done to carded yarn already manufactured. Second, Pakistan's claim that "most spinning plants produce both combed and carded yarns", and that "it often happens in normal course of trade that a mill shuts down all or part of its combers in response to changes in demand" does not reflect the way U.S. mills operate. The United States is not aware of any mill that spins cotton yarn for sale in the United States that switches back and forth from combed cotton yarn to carded cotton yarn as part of the same production line. Third, Pakistan uses the example of Dixie, Tarboro Plant to claim that only "very old plants (more than 30 years old)" exited the combed yarn business. Presumably Pakistan is referring to the age of the building, or structure. In fact, all of the machinery in the mill that was owned by Dixie was replaced during the late 1980s and early 1990s. When the mill was purchased by Pillowtex Corporation, a vertically integrated manufacturer of home furnishing products, in 1998, Pillowtex retooled the Tarboro Plant to produce *carded yarn*, with the result that additional investment had to be made to balance the spinning operation of the mill. Pillowtex did not, as Pakistan alleges, simply bypass the combers to produce carded yarn. Fourth, Pakistan's unsupported assertion that "there are no measures...required to convert a plant that produces combed cotton yarn into a plant that produces carded cotton yarn ..." is untrue. As the United States explained in its answers to the Panel's questions, such a conversion would produce additional raw material costs, amortization costs, opportunity costs, marketing costs, and costs (in the form of either idling other equipment or investing in new equipment) associated with obtaining optimum balance of the mill's new production process.

[64] Answers of Pakistan to Written Questions from the Panel, at p. 19. The United States notes that the data presented by Pakistan on this page is confusing and drawn from a number of sources outside the scope of this proceeding. As to the number of plants in the industry, Pakistan relies on data for 1994 and 1995 supplied in a different market statement from the one at issue in this proceeding The Market Statement at issue in this proceeding covers 1996, 1997, and January-August 1998; therefore, the data for 1994-1995 and other market statements are outside the scope of the investigation and should not be considered. *See* First Written Submission of the United States, at ¶¶ 157-159. As to the production data, Pakistan appears to have drawn statistics from a variety of reports of the U.S. Census Bureau, in addition to citing data for 1994 and 1995, which are outside the defined period of investigation.

becoming more efficient. And the process of "autonomous adjustment" appears to have been successful, as evidenced by a gradual slowing in the number of establishments leaving the industry (falling by six in 1994-95, four in 1995-96, and one in 1996-97) and continued gains in productivity.

62. However, even based on Pakistan's presentation, it is clear that the situation changed dramatically in 1998. In fact, two mills exited the industry during the first eight months of that year. And, for the first time since 1994, production decreased, nearly to the 1995 level. In 1998, something significant happened to this industry. As reflected in the facts of this case, that something is obvious: the dramatic 91 percent surge in Category 301 imports during the first eight months of that year.

63. In short, as the United States has discussed,[65] the two concepts – "serious damage" and "continuous autonomous industrial adjustment" – are not, as Pakistan suggests,[66] mutually exclusive. An industry may suffer serious damage or actual threat of serious damage *at the same time* that it is in the process of readjusting or retooling. The ATC explicitly recognizes this fact by providing a transitional safeguard mechanism *during* the ten-year restructuring period given to the textiles and clothing sector. Far from being incompatible with continuous autonomous adjustment, the Article 6 safeguard is an essential element in this restructuring process. Article 6 gives industries seriously damaged by increased imports the ability to adjust.

2. *Pakistan's Challenge to the U.S. Finding of Actual Threat of Serious Damage is without Foundation in the ATC.*

64. Pakistan has been unable to rebut the overwhelming evidence contained in the Market Statement which demonstrates that the surge in Category 301 imports caused an actual threat of serious damage to the domestic industry. Without acknowledging that the ATC does not specifically require a Member to conduct a separate analysis of actual threat of serious damage or set forth parameters for that analysis, Pakistan assumes that such an analysis is required and even proposes its own parameters.[67] However, the parameters advanced by Pakistan have no support in either the text or past interpretations of the ATC.

65. Before turning to Pakistan's asserted parameters for an analysis of actual threat of serious damage, the United States notes that Pakistan relies on *United States - Underwear* to support its view that a separate analysis is required but ignores *United States - Wool Shirts*. In an observation that was unnecessary to its findings, the Panel in *United States - Underwear* did

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[65] *See* First Written Submission of the United States, at ¶¶ 164-167 *and* Answers of the United States to Written Questions from the Panel, at ¶¶ 51-52.

[66] *See* First Written Submission of Pakistan, at p. 34 *and* Answers of Pakistan to Written Questions of the Panel, at pp. 16-17.

[67] Answers of Pakistan to Written Questions from the Panel, at pp. 24-25.

express its view that a Member may need to justify a finding of actual threat of serious damage with some form of prospective analysis: "... in our view, a finding on 'serious damage' requires the party that takes action to demonstrate that damage has already occurred, whereas a finding of 'actual threat of serious damage' requires the same party to demonstrate that, unless action is taken, damage will most likely occur in the near future."[68] By contrast, the Panel in *United States - Wool Shirts* declined to consider "whether serious damage or actual threat thereof is a single concept; whether serious damage is a short hand for the expression 'serious damage or actual threat thereof'; whether actual threat of serious damage is but a lower level of serious damage; whether the two expressions refer to different types of market situation in the importing market ...".[69] Significantly, neither panel opined on what might be contained in such a separate analysis beyond the *Underwear* Panel's comment that such an analysis requires a Party to demonstrate "that, unless action is taken, damage will most likely occur in the near future."[70]

66. As the United States discussed, in preparing its Market Statement on Category 301 imports, the United States was mindful of the issue regarding whether a separate analysis was required for actual threat of serious damage.[71] As a result, the United States undertook a separate analysis, which is found in Section VIII of its Market Statement. In doing so, it looked to the ATC for guidance on the parameters of that analysis and based its analysis on the economic factors set out in Article 6.3 and on data that, pursuant to Article 6.7, were as up to date as possible. This separate analysis supports the finding of an actual threat of serious damage.[72]

67. For Pakistan, however, these parameters are not enough. Without citing any support in the ATC or elsewhere, Pakistan adds additional requirements of its own: "a further sharp and substantial increase"[73] and a requirement to "quantify the level of those [future] imports."[74]

68. With regard to Pakistan's first additional requirement, the United States notes that Pakistan appears to confuse the text of Articles 6.2 and 6.3 with the text of Article 6.4. Articles 6.2 and 6.3 do not require a showing of a "sharp and substantial increase" for establishing serious damage or actual threat thereof. Rather, a "sharp and substantial increase" is required for

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[68] *United States - Underwear*, at ¶ 7.55. The *Underwear* Panel expressed this "view" in the context of concluding that the market statement at issue made findings exclusively on serious damage and made no reference to actual threat

[69] *United States - Wool Shirts*, at ¶ 7.53. The Market Statement considered by the *Wool Shirts* Panel did not reach a finding regarding actual threat of serious damage, but only serious damage.

[70] *United States - Underwear*, at ¶ 7.5.

[71] First Written Submission of the United States, at ¶ 113.

[72] The United States provided details of its analysis of actual threat of serious damage in ¶ 67 of its answers to the Panel's written questions and in ¶¶ 113-117 of its first written submission. Accordingly, the United States will not repeat that analysis here.

[73] Answers of Pakistan to Written Questions from the Panel, at p. 25.

[74] Answers of Pakistan to Written Questions from the Panel, at p. 25.

attribution to a particular Member or Members under Article 6.4. Articles 6.2 and 6.3 only require a Member invoking a safeguard to show that a particular product is "being imported into its territory as to cause serious damage or actual threat thereof." In the Market Statement, the United States separately reviewed the economic data on all the factors set out in Article 6.3 in conducting its analysis of actual threat of serious damage.[75] The United States concluded that the flood of Category 301 imports into the United States would continue in absence of U.S. action: "The increase in global imports and the fact that they are and will continue to be priced below domestic prices leads the USG to conclude that the defined domestic industry is threatened with serious damage or the exacerbation of serious damage from increased imports of the subject product."[76]

69. At best, Pakistan has simply confused the serious damage requirements of Article 6.2 and 6.3 with the attribution requirements of Article 6.4. At worst, Pakistan is inviting this Panel to write into the serious damage requirements of Article 6.2 and 6.3 the different attribution requirement of Article 6.4. It is worth observing that, even though world imports had doubled and Pakistan's own imports had quadrupled in a mere eight months, Pakistan would want to impose on an analysis of actual threat of serious damage a requirement to show a *second* sharp and substantial surge – beyond this first dramatic surge. As if that were not enough, Pakistan would have the Member invoking the safeguard "quantify" that future surge. It is clear that, at least in circumstances where there was already an actual threat to the domestic industry, requiring a Member to demonstrate a second sharp and substantial increase would render a Member's ability to establish actual threat of serious damage a nullity.[77] In addition, to demand, as Pakistan does, that a Member "quantify" that future sharp and substantial increase simply invites a Member to engage in speculation, and adds nothing to an analysis of actual threat of serious damage.

70. In sum, Pakistan's efforts to call into question the U.S. analysis of actual threat of serious damage fail to establish a violation of the ATC.

3. *The United States Properly Established Causation.*

71. Article 6.2 of the ATC requires the Member invoking a transitional safeguard to demonstrate that the serious damage or actual threat of serious damage is caused by the increase in imports and not by other causes such as technological changes or changes in consumer preference. The United States clearly established, based on clear and striking evidence, that the impact of the surge of low-priced imports on the domestic industry was unmistakably serious damage and actual threat thereof. The United States also demonstrated that other possible factors

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[75] Market Statement, at ¶¶ 8.1-8.6.

[76] Market Statement, at ¶ 8.7.

[77] Requiring a second surge ignores that fact that serious damage does not necessarily coincide with an increase in imports but might instead closely follow the surge once its effects have been felt.

– such as changes in consumer preference and technological changes – were not responsible.[78] In examining other possible causes, the United States observed that "the market for these yarns has remained constant" during the investigation period, demonstrating that "there has been no change in consumer preference for these products" that could account for the serious damage.[79] The Market Statement also notes that "there has not been any significant new technological changes in the defined industry" during the investigation period.[80]

72. Pakistan makes no effort to challenge the U.S. demonstration that increased Category 301 imports, not other factors, caused damage to the defined domestic industry. Rather, in its First Written Submission, Pakistan focuses on the notion that causality cannot be established unless the Member undertakes an examination of "the relationship between an upward trend in imports and negative trends in economic variables," without elaborating on how the United States failed to do so. Pakistan disregards the clear showing that imports were surging as the economic factors listed in Article 6.3 were deteriorating[81] and has made no attempt to rebut this argument.[82] Similarly, Pakistan has not renewed its other contention related to causation, namely, that the time period considered by the United States was too short to establish causation.[83]

C. ***Attribution to Pakistan is Consistent with the ATC.***

73. The facts of this case clearly demonstrate that U.S. attribution of serious damage and actual threat of serious damage to a sharp and substantial surge in Category 301 imports from Pakistan was fully consistent with the requirements of Article 6.4 of the ATC. Pakistan has not contested the core facts set out in the Market Statement. Rather, Pakistan attempts to evade the appropriateness of the U.S. attribution of serious damage or actual threat thereof to it under Article 6.4 by asserting, without foundation, that the United States was required by the ATC to conduct a comparative analysis of imports from Pakistan and imports from Mexico in its Market Statement. As the United States demonstrated in its First Written Submission, the ATC does not impose on an importing Member such a source-specific analysis.[84] Rather, Article 6.4 requires a Member to base its attribution on a sharp and substantial increase from the Member and "on the basis of the level of imports as compared with imports from other sources, market share, and import and domestic prices at a comparable stage of the commercial transaction." As reflected in

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[78] *See* Market Statement, at Sections VI and VIII.

[79] Market Statement, at ¶ 6.7.

[80] Market Statement, at ¶ 6.7.

[81] Market Statement, at ¶¶ 6.2-6.5, 8.4-8.7.

[82] The United States fully addresses Pakistan's claims at ¶¶ 93-95 of its First Written Submission.

[83] As the United States stated in its First Written Submission, the United States considered comprehensive data for a two-year and eight-month period. *See* First Written Submission of the United States, at ¶¶ 96-99.

[84] First Written Submission of the United States, at ¶¶ 134-144.

the Market Statement, the United States carefully considered all of these factors in making its attribution to Pakistan.[85]

74. In its Answers to Written Questions from the Panel, Pakistan concludes that it "disagrees with the U.S. claim that the requirement to impose a restraint on a 'Member by Member' basis constitutes a license to arbitrarily exempt a particular exporting country to which serious damage must be attributed from the application of the transitional safeguard."[86] The United States has never made such a claim. More significantly, however, this claim does not reflect the basis for attributing serious damage and actual threat thereof to Pakistan in this case.

75. Table V of the Market Statement shows that thirty sources exported Category 301 yarn to the United States during the period of the investigation. To some extent, each of these sources contributed to the total increase in imports and therefore arguably to the serious damage or actual threat thereof caused by those increased imports. In order to determine to which of these Member or Members to attribute this serious damage or actual threat thereof, Article 6.4 requires an examination of particular factors: a sharp and substantial increase in imports; level of imports compared with imports from other sources; market share; and import and domestic prices at a comparable stage of the commercial transaction. Under the ATC, none of these factors – including volume – is dispositive.

76. Based on the totality of these factors, the U.S. determination to attribute serious damage to Pakistan was not arbitrary. It was well-grounded in the data analyzed by the United States and the requirements of Article 6.4. Pakistan is the second largest U.S. supplier of Category 301 combed cotton yarn. In the first eight months of 1998, Category 301 imports from Pakistan surged 283.2 percent; imports from Pakistan as a percentage of total imports doubled; and imports from Pakistan as a share of domestic production quadrupled, more than any other major supplier. Pakistan's prices were 26.2 percent lower than domestic prices for all combed cotton yarn and 28.3 percent lower for the specific subset of combed cotton yarn where 54 percent of Category 301 imports from Pakistan were concentrated. Attribution to Pakistan was plainly appropriate, given these facts that Pakistan has not challenged.

77. Nor was the U.S. decision *not* to attribute serious damage to Mexico arbitrary. Pakistan appears to suggest that the United States failed to consider imports from Mexico given that the Market Statement does not include a separate analysis of Mexico. However, the Market Statement supports the transitional safeguard related to Category 301 imports from *Pakistan*, and specific information regarding *Mexico* was not required. The ATC does not require the Market Statement to include a *separate* analysis of each exporting Member or of all principal suppliers to

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[85] Market Statement, at ¶¶ 7.1-7.6, 8.8-8.10. *See also* First Written Submission of the United States, at ¶¶ 126-133.

[86] Answers of Pakistan to Written Questions From the Panel, at p. 23.

the market; Article 6.4 only requires a consideration of the factors enumerated therein, and Article 6.7 requires this information to be as up-to-date as possible.

78. Nevertheless, because Mexico does not appear as a separate heading in the Market Statement does not mean that the United States did not consider data available to it regarding Mexico in conducting its attribution analysis. Statistics regarding Mexico reinforced the U.S. determination to attribute serious damage and actual threat of serious damage to a sharp and substantial increase in Category 301 imports from Pakistan. These statistics revealed Mexico's imports over the period of the investigation were also increasing. However, during the first eight months of 1998, the magnitude of Pakistan's surge was *greater* than Mexico's, and Pakistan's prices were significantly *lower* than those of Mexico.[87] In an industry where profit margins are determined by pennies, the difference between imports from Pakistan and Mexico was very significant.

79. The question presented regarding attribution is not a question of whether any Member of this Panel would have also attributed to Mexico as well as Pakistan under these facts. Rather, as the Panel in *United States – Underwear* noted, this Panel is to consider whether the United States considered the relevant facts, provided an adequate explanation of how those facts as a whole support the determination and whether the determination was made consistent with the obligations in the ATC.[88] When this standard is applied, it is plain that the U.S. finding of serious damage and actual threat thereof and its attribution to Pakistan were appropriate and consistent with the ATC.

IV. THE UNITED STATES ACTED WITHIN ITS ATC RIGHTS IN DECLINING TO FOLLOW THE NON-BINDING RECOMMENDATIONS OF THE TMB.

80. Pakistan has repeatedly insinuated that the United States acted improperly by failing to follow the TMB's recommendations in this case, perhaps to suggest that the United States violated the ATC in this regard. As discussed above, the United States has scrupulously adhered to the provisions of the ATC in this action. The United States fully justified its transitional safeguard action on the factors of Article 6 and defined the domestic industry in accordance with standard U.S. practice in transitional safeguard actions and with the ATC. The United States also made several efforts in multiple rounds of consultations with Pakistan to find a mutually

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[87] During January-August 1998, Category 301 imports from Pakistan surged 283.2 percent compared with a 212.5 percent increase in Category 301 imports from Mexico. For all of Category 301 imports, the price of imports from Mexico ($3.96 per kilogram) was 9.1 percent higher than the price of imports from Pakistan ($3.63 per kilogram). Where Category 301 imports are concentrated (representing 54 percent of Category 301 imports from Pakistan and 77 percent of Category 301 imports from Mexico), the price of imports from Mexico ($3.96 per kilogram) was 16.8 percent higher than the price of imports from Pakistan ($3.39 per kilogram).

[88] *United States – Underwear*, para 7.13.

satisfactory solution to the safeguard action. The United States has in no way infringed on Pakistan's ATC rights in this matter.

81. While the TMB has an important overall supervisory role in the implementation of the ATC, TMB recommendations are non-bindings[89] and are not dispositive for purposes of these proceedings. In addition, Article 8.10 of the ATC specifically contemplates that a Member may disagree with the TMB's findings.[90] In this case, the United States had a number of serious, substantive concerns about the TMB review and accordingly took action specifically permitted by Article 8.10, and informed the TMB that the United States was unable to conform to the TMB's recommendation.[91] The TMB, as provided for in Article 8.10, conducted another review of the matter and reaffirmed its previous recommendation. Again, as permitted under Article 8.10, the United States informed the TMB that it was not in a position to accept its recommendations. Eight months later, Pakistan exercised its rights under Article 8.10 to bring the matter before the Dispute Settlement Body.[92] Therefore, the United States has carefully followed the ATC both in substantive and procedural terms, just as Pakistan has exercised its rights to request that this Panel hear its claims.

82. The United States would also like to comment on Pakistan's and India's assertions regarding the TMB's recommendations on the U.S.-Thailand safeguard measure discussed in the

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[89] Article 6.10 of the ATC requires the TMB to "promptly conduct an examination of the [safeguard action], including the determination of serious damage, or actual threat thereof, and its causes, and make appropriate *recommendations* to the Members concerned." (emphasis supplied)

[90] Article 8.10 states that "[i]f a Member considers itself unable to conform with the recommendations of the TMB, it shall provide the TMB with the reasons therefor...Following thorough consideration of the reasons given, the TMB shall issue any further recommendations it considers appropriate forthwith. If, after such further recommendations, the matter remains unresolved, either Member may bring the matter before the Dispute Settlement Body and invoke paragraph 2 of Article XXIII of GATT 1994 and the relevant provisions of the Dispute Settlement Understanding."

[91] *See* Response of the United States to the TMB's recommendation, 27 May 1999. Pakistan attached this document to its First Written Submission as PAK-5. The United States informed the TMB that is had serious concerns with the TMB's findings, including the TMB's consideration of extraneous and irrelevant material in its evaluation of a specific safeguard action and its statement that it was not "in a position to assess without doubt whether or not serious damage had been caused . . .". (G/TMB/18, para 32). The United States informed the TMB that this "without doubt" standard is clearly beyond the TMB's mandate, is unreasonable, and impossible to meet under any circumstances.

[92] The Panel's finding in *United States - Wool Shirts* provides a detailed discussion of the many differences between the TMB and a DSU panel. For instance, the Panel affirmed that recommendations by the TMB differ substantially from findings of DSU panels: "We note also that, according to Article 8.10 of the ATC, when the TMB process has been completed, a Member which remains unsatisfied with the TMB recommendations can request the establishment of a panel without having to request consultations under Article 4 of the DSU. This is to say that the TMB process can replace the consultation phase in the dispute settlement process under the DSU and is distinct from the formal adjudication process by panels." *United States - Wool Shirts*, at ¶ 7.19.

First Written Submission of the United States.[93] Pakistan and India claim that the TMB's recommendations are somehow not valid because the issue of industry definition was not a disputed matter.[94] In its First Written Submission, the United States was simply pointing out that it acted in an entirely reasonable and responsible manner by drawing conclusions from the TMB's endorsement of the transitional safeguard measure on Category 603 yarn, given that the facts and circumstances of the "domestic industry producing like and/or directly competitive products" in the two cases were strikingly similar. In that case, the TMB reviewed the Article 6 restraint on imports of Category 603 yarn from Thailand under Article 6.9 of the ATC, which requires the TMB to review Article 6 measures in those instances in which an agreement has been reached.

83. The TMB's recommendations in that case[95] demonstrate that the TMB carefully considered the issue of the definition of industry employed by the United States (the yarn for sale industry, as was done in the present case). These recommendations also reveal that the TMB requested and received additional information from the United States in order to assist its consideration of the question of definition of industry. Ultimately, the TMB found and reported that "any evidence of serious damage caused by imports would, therefore, reflect essentially the situation in the domestic industry producing yarn for sale ... ."[96] And the TMB "concluded that this restraint measure agreed between the United States and Thailand was justified in accordance with the provisions of Article 6 of the ATC," which is to say, *all* of Article 6, including Articles 6.2 and 6.3.

84. The United States would like to stress that it did not cite these TMB recommendations to suggest that they were legally binding; they are not. Rather, the United States referred to these recommendations to emphasize that – in light of these recommendations (approved by the TMB just eight months before the finalization of the Market Statement at issue) – the United States acted reasonably in defining the domestic industry in a similar manner based on virtually identical facts and circumstances. Given the TMB's overall supervisory responsibilities for the implementation of the ATC, the United States was dismayed by the apparent ease with which the TMB reversed itself in its analysis of the present transitional safeguard matter, on the issue of definition of industry as well as on the issue of data presentation. In the view of the United States, the TMB's arbitrary and inconsistent behavior raises serious systemic implications for the remainder of the ATC's transition period.

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[93] *See* First Written Submission of the United States, at ¶¶ 53-55. *See also* "Report of the Forty-Third Meeting," G/TMB/R/42, 5 June 1998, which was provided as Exhibit "U.S.-7".

[94] Statement of Pakistan at the First Meeting of the Panel, at pp. 5-6. Statement of India at the First Meeting of the Panel, at p. 2.

[95] "Report of the Forty-Third Meeting," G/TMB/R/42, 5 June 1998. The United States attached this document to its First Written Submission as U.S.-7.

[96] "Report of the Forty-Third Meeting," G/TMB/R/42, at ¶ 9.

V. THE CAREFULLY NEGOTIATED BALANCE OF THE ATC MUST RETAIN ITS FULL MEANING DURING THE REMAINDER OF THE TRANSITION PERIOD.

85. All Parties to this dispute agree that the ATC represents carefully negotiated language reflecting an equally carefully drawn balance of rights and obligations of Members.[97] On the one hand, exporting Members such as Pakistan and India have the security that, at the end of ten years, all textile products will be subject to normal GATT rules. On the other hand, the importing Members, like the United States, maintain the ability to address damaging surges of imports during the delicate ten-year transition from a regime of special quotas to GATT rules. That was the balance struck, and that balance includes the Article 6 transitional safeguard mechanism as a fundamental provision.

86. Pakistan, however, appears to think otherwise. Pakistan would like the Panel to believe that "... the drafters of the ATC regarded transitional safeguard actions as measures running counter to the basic purpose of the ATC."[98]

87. To promote this misguided view of Article 6, Pakistan has throughout this proceeding asked the Panel to change the rules of the ATC. For the *domestic industry*, Pakistan would like the Panel to delete "and/or" and "directly competitive" from Article 6.2 in order to compel a restrictive reading of the "domestic industry producing like and/or directly competitive products." For *serious damage*, Pakistan would like the Panel to negate the analysis and factors of Article 6.3 in any instance where an industry may be restructuring, notwithstanding clear evidence of serious damage. For *actual threat of serious damage*, Pakistan would like the Panel to write new terms into the ATC to require importing Members to prove a further sharp and substantial increase and to quantify the level of those future imports. For *causation*, Pakistan would like the Panel to write in extended time periods to require Members whose domestic industry is facing a damaging surge to indefinitely forego safeguard action. For *attribution*, Pakistan would like the Panel to expand the obligations of Article 6.4 to require a separate attribution analysis of each Member contributing to the increase in total imports.

88. Each and every claim advanced by Pakistan is designed to render the Article 6 transitional safeguard mechanism meaningless during the remaining five years of the ATC's transition period. The Panel should reject Pakistan's effort in this regard. Instead, the United States urges the Panel to take special care to protect the integrity of the ATC during its remaining four years by giving full meaning to its terms and full weight to its provisions, including Article 6, in order to advance the object and purpose of the ATC as reflected in its actual words.

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[97] *See e.g.*, First Written Submission of the United States, at ¶ 43; Statement of Pakistan at the First Meeting of the Panel, at p. 2; and Statement of India at the First Meeting of the Panel, at p. 1.

[98] Answers of Pakistan to Written Questions from the Panel, at p. 13.

VI. CONCLUSION

89. For the foregoing reasons and those set out in its First Written Submission, First Oral Statement before the Panel, and Answers to Written Questions from the Panel, the United States respectfully submits that its transitional safeguard measure applied to imports from Pakistan of combed cotton yarn satisfies U.S. obligations under the ATC. Pakistan's and India's claims to the contrary are without merit, and the Panel should reject them.